

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

INGA GUTIERREZ,

Plaintiff,

v.

CV 06-0937 RB/WPL

THOMAS SCHWANDER, ET AL.,

Defendants.

REPORT AND RECOMMENDATION

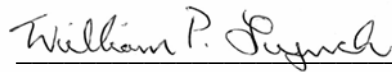
On June 12, 2009, the Schwander and Gordon Defendants filed a Joint Motion for Status Conference. (Doc. 459.) The motion stated that Plaintiff was incarcerated and awaiting a competency hearing in a criminal case pending in state court. The competency hearing was scheduled for July 23, 2009. On June 24, 2009, the presiding judge referred the motion to me to conduct hearings and perform any legal analysis required to recommend a disposition of the motion. (Doc. 461.) On July 22, 2009, I entered an order noting that it would be inappropriate to schedule a status conference until after a determination has been made regarding Plaintiff's competency. Accordingly, I ordered the Schwander and Gordon Defendants to notify the Court when the state court made its ruling regarding Plaintiff's competency. (Doc. 464.) I held the Joint Motion for Status Conference in abeyance pending this notification. On July 31, 2009, the Schwander and Gordon Defendants notified the Court that the competency hearing had been vacated. (Doc. 465.) Thereafter, the competency hearing continued to be postponed. On January 11, 2010, the Gordons notified the Court that the competency hearing is now set for February 12, 2010, and stated that they would notify this Court when the state court makes its competency ruling. (Doc. 469.)

Because of the lengthy delay caused by the postponement of the state court's competency hearing, I recommend that the Joint Motion for Status Conference be denied without prejudice. Defendants should be allowed to refile their motion after the state court makes its competency ruling. I further recommend that the Schwander and Gordon Defendants be ordered to keep this Court apprised of any further delays in state court and to provide this Court with a copy of the state court's ultimate decision on competency.

IT IS THEREFORE RECOMMENDED THAT:

- 1) the Joint Motion for Status Conference be denied without prejudice;
- 2) the Schwander and Gordon Defendants promptly notify this Court if the competency hearing is vacated or reset; and
- 3) the Schwander and Gordon Defendants promptly provide this Court with a copy of the state court's competency decision.

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of this Report and Recommendation they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Report and Recommendation. If no objections are filed, no appellate review will be allowed.**



William P. Lynch
United States Magistrate Judge